

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D.P. MARSHALL JR., Judge

DIVISION II

CA06-975

2 May 2007

ALICIA AGUILAR and
JUAN AGUILAR,
APPELLANTS

v.

MEDARDO GALDAMEZ,
APPELLEE

AN APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT [CIV2004
1546-5]

HONORABLE XOLLIE MARIE BUFFER
DUNCAN, CIRCUIT JUDGE

AFFIRMED

A jury awarded Mr. & Mrs. Juan Aguilar compensatory damages but no punitive damages in their negligence action against Medardo Galdamez. The Aguilars appeal, challenging only the part of the judgment dealing with punitive damages. Galdamez, who defaulted below, has not filed an appellee's brief.

I.

The Aguilars were passengers in a car driven by Medardo Galdamez. He lost control of the car in a curve, and the Aguilars were badly injured in the resulting one-vehicle accident. Tests at the hospital revealed that Galdamez had a blood-alcohol level of .11 and had benzodiazepine in his system. The Aguilars were Arkansas residents, and had been visiting family and friends in Northwest Arkansas. The

accident occurred in Oklahoma when the Aguilar, Galdamez, and others were on a fishing trip.

The Aguilar sued Galdamez in Benton County asserting negligence and seeking compensatory damages. He defaulted. The Aguilar then filed an amended complaint reasserting all their original claims and seeking punitive damages. Galdamez defaulted again.

The Aguilar tried their case on damages to a jury. Galdamez did not appear or defend at the trial. At the Aguilar's request, the circuit court applied Oklahoma law to the substantive issues and Arkansas law to the procedural issues. The Aguilar's proof showed that they had incurred approximately \$550,000.00 in medical bills. The jury returned a nine-person verdict awarding the Aguilar compensatory damages of \$1 million. The Aguilar then offered proof on punitive damages. Mr. Aguilar testified about Galdamez's being intoxicated, never apologizing, and never offering to pay any medical bills. At the end of Mr. Aguilar's testimony, his lawyer asked him "how much" Aguilar thought Galdamez should be punished. Mr. Aguilar answered "I think the verdict that was read previously." The Aguilar then rested. They did not move the circuit court to enter a directed verdict in their favor.

After being instructed by the circuit court on the Oklahoma law about punitive damages, the jury completed two model Oklahoma verdict forms. First, the jurors unanimously found by clear and convincing evidence that Galdamez acted with

reckless disregard of the rights of another. The jury also unanimously awarded the Aguilar “\$0.00” punitive damages on the second verdict form.

The circuit court announced the jury’s verdict on the punitive issues, and then asked the Aguilar “anything else from the jury?” The Aguilar did not ask the court to poll the jury, argue that the verdict was internally inconsistent, or request that the jury resolve any inconsistency in its verdict. Instead, the Aguilar moved orally for judgment notwithstanding the verdict without specifying any grounds. The court dismissed the jury, and then denied the Aguilar’s oral motion. The Aguilar did not move for a new trial.

II.

The Aguilar cast their argument on appeal as one about substantial evidence. They point to an alleged inconsistency in the jury’s verdicts on the punitive issues: the jury concluded Galdamez acted with reckless disregard, but awarded zero damages. The Aguilar ask for one of two things: a new trial solely on the amount of punitive damages, or a new trial on all the punitive-damage issues. In any event, the Aguilar seek to preserve that part of the judgment awarding them \$1 million in compensatory damages. We apply Arkansas law to all these procedural issues. And we conclude the judgment should be affirmed.

First, the Aguilar’s argument turns on the alleged inconsistency in the jury’s two verdicts on punitive damages. They waived any inconsistency, however, when they

did not bring it to the circuit court's attention before the jury was discharged. *Spears v. Mills*, 347 Ark. 932, 936–41, 69 S.W.3d 407, 410–14 (2002). The Aguilar's unspecific JNOV motion does not fill this gap. That motion was unfounded because the Aguilar's had not moved for a directed verdict, and thus had no motion for judgment as a matter of law to renew. Ark. R. Civ. P. 50(b).

Second, the rule in law cases is that compensatory and punitive damages are generally so interwoven that “an error with respect to one requires a retrial of the whole case.” *Shepherd v. Looper*, 293 Ark. 29, 31, 732 S.W.2d 150, 152 (1987). “It is hardly possible that the jury did not take each into consideration in fixing the other.” *Life & Casualty Insurance Co. of Tennessee v. Padgett*, 241 Ark. 353, 357, 407 S.W.2d 728, 730 (1966) (George Rose Smith, J.). The Aguilar's have not asked for a new trial on compensatory damages, and therefore we are unable to grant the relief they do seek. *Compare McVay v. Couger*, 276 Ark. 385, 386, 635 S.W.2d 249, 250 (1982).

Affirmed.

PITTMAN, C.J., and MILLER, J., agree.